

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CHARLES V. FARNSWORTH,

Plaintiff,

v.

SANDRA CARTER *et al.*,

Defendants.

Case No. C05-5223RJB

REPORT AND  
RECOMMENDATION

**NOTED FOR:  
November 25<sup>th</sup>, 2005**

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4.

PROCEDURAL HISTORY

This case was removed from Clallam County Superior Court by defendants who paid the filing fee under receipt number 512996. (Dkt. # 1). A copy of the compliant was attached to the declaration of counsel, filed by the clerks office, and is properly before the court. (Dkt. # 1, declaration of McLachlan Exhibit 1). Defendants answered the complaint, (Dkt. # 2), and now move for summary judgment. (Dkt. # 9). Plaintiff has responded and filed amendments to his response. (Dkt. # 10 and 13). Defendant replied to the original response. (Dkt. # 12). By separate order the court has indicated it will consider the amendment to the response

1 but will not remove briefing from the court file.

## 2 FACTUAL BACKGROUND

3 Plaintiff was incarcerated at the Clallam Bay Correction Center at all times relevant to this action.  
4 Plaintiff was challenging his conviction through a personal restraint petition in the Washington State Court of  
5 Appeals Division II. (Dkt. # 1, declaration of McLachlan Exhibit 1, complaint page 2). In November of 2004  
6 his petition was denied. (Dkt. # 1, declaration of McLachlan Exhibit 1, complaint page 2).

7 Plaintiff alleges he tried several times between November and January to get "priority access" to the  
8 law library but his requests were denied. Plaintiff asked for and received two extensions of time to file his  
9 motion for discretionary review from the Washington State Supreme Court. (Dkt. # 1, declaration of  
10 McLachlan Exhibit 1, complaint page 2 and 3). Plaintiff did attend the law library during normal hours for  
11 approximately 28 hours between November, when his petition was denied, and January when he filed his brief  
12 with the Washington State Supreme Court. (Dkt. # 9). Plaintiff also had the ability to work on his brief in his  
13 cell. (Dkt. # 9).

14 Plaintiff does not mention in his complaint that he filed his brief requesting discretionary review with  
15 the Washington State Supreme Court before the second extension of time elapsed or that his motion was denied  
16 on the merits. (Dkt. # 9, Exhibit 4, Attachment A, Deposition of Farnsworth pages 12 and 13). Plaintiff  
17 contends that if he had been granted priority access to the library his briefing would have been better and his  
18 motion may have been granted. (Dkt. # 10, page 4).

19 He brings action against the superintendent of the facility and the grievance coordinator who denied his  
20 requests for priority access. He seek \$11,000 damages plus costs and fees and what ever other relief the court  
21 deems just. (Dkt. # 1, declaration of McLachlan Exhibit 1, complaint page 4 and 5).

## 22 DISCUSSION

23 A summary judgment shall be rendered if the pleadings, exhibits, and affidavits show that there is  
24 no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of  
25 law. Fed. R. Civ. P. 56(c). In deciding whether to grant summary judgment, the court must view the  
26 record in the light most favorable to the nonmoving party and must indulge all inferences favorable to that  
27 party. Fed. R. Civ. P. 56(c) and (e). "When `the record taken as a whole could not lead a rational trier of  
28 fact to find for the non-moving party, there is no genuine issue for trial.'" Matsushita Elec. Industr. Co. v.

1 Zenith Radio Corp., 475 U.S. 574, 587 (1986), *quoting* First Nat'l Bank v. Cities Serv. Co., 391 U.S. 253,  
2 289 (1968).

3 A plaintiff must allege deprivation of a federally protected right in order to set forth a *prima facie*  
4 case under 42 U.S.C. § 1983. Baker v. McCollan, 443 U.S. 137, 140 (1979). A 42 U.S.C. § 1983  
5 complaint must allege that (1) the conduct deprived a person of a right, privilege, or immunity secured by  
6 the Constitution or laws of the United States. Parratt v. Taylor, 451 U.S. 527, 535 (1981), *overruled on*  
7 *other grounds*, Daniels v. Williams, 474 U.S. 327 (1986). Section 1983 is the appropriate avenue to  
8 remedy an alleged wrong only if both of these elements are present. Haygood v. Younger, 769 F.2d 1350,  
9 1354 (9th Cir. 1985), *cert. denied*, 478 U.S. 1020 (1986).

10 Here, plaintiff alleges that his constitutional right to access the courts was violated because he was  
11 not given priority access to the law library, but, he admits he did receive normal access to the law library.  
12 Plaintiff did file a brief requesting discretionary review that was accepted by the Washington State  
13 Supreme Court.

14 The United States Supreme Court has held that prisoners have a constitutional right of meaningful  
15 access to the courts premised on the Due Process Clause. Bounds v. Smith, 430 U.S. 817, 821 (1977).  
16 Such access requires prison authorities to "assist inmates in the preparation and filing of meaningful legal  
17 papers by providing prisoners with adequate law libraries or adequate legal assistance from persons trained  
18 in the law." Bounds, 430 U.S. at 828 (emphasis added); Storseth v. Spellman, 654 F.2d 1349, 1352 (9th  
19 Cir. 1981).

20 The Ninth Circuit has determined that "right of access" claims that do not allege inadequacy of the  
21 law library or inadequate assistance from persons trained in the law, must allege an "actual injury" to court  
22 access. Sands v. Lewis, 886 F.2d 1166, 1171 (9th Cir. 1989). An "actual injury" consists of some specific  
23 instance in which an inmate was actually denied access to the courts. Id. Only if an actual injury is alleged  
24 may plaintiff's claim survive. Id.

25 Plaintiff does not challenge the adequacy of the library in the complaint. Although he now attempts  
26 to raise that issue in his response, the issue is not properly before the court. (Dkt. # 10). Plaintiff has  
27 suffered no actual injury. His briefing was accepted by the Washington State Supreme Court. His  
28 argument that his briefing would have been better and his chances of success would have been greater does

1 not state a viable cause of action. Sands v. Lewis, 886 F.2d 1166, 1171 (9th Cir. 1989).

2 CONCLUSION

3 Plaintiff does not state a cause of action under 42 U.S.C. § 1983 for denial of access to courts  
4 where his briefing was accepted but he believes greater access to the law library would have resulted in a  
5 better brief. This action should be **DISMISSED WITH PREJUDICE** for failure to state a claim. As a  
6 filing fee was paid this action does not count as a pursuant to 28 U.S.C. 1915 (g). A proposed order  
7 accompanies this report and recommendation.

8 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the  
9 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ.  
10 P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v  
11 Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to  
12 set the matter for consideration on **November 25<sup>th</sup>, 2005**, as noted in the caption.

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14  
15 DATED this 1<sup>st</sup> day of November, 2005.

16  
17 /s/ J. Kelley Arnold  
18 J. Kelley Arnold  
19 United States Magistrate judge  
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